

CITY OF GEORGETOWN  
ORDINANCE NO. 2016-\_\_\_\_\_

AN ORDINANCE RELATED TO PLANNED COMMUNITY DEVELOPMENTS AND  
HOMEOWNERS ASSOCIATIONS

Sponsor – Council Member \_\_\_\_\_

WHEREAS, the maintenance of private common areas and the enforcement of applicable covenants, conditions and restrictions are vital to the integrity of individual subdivisions within the City of Georgetown and the quality of life for the residents therein; and

WHEREAS, the City Council finds that developers use planned communities and their governing homeowners associations as the primary mechanism for maintaining private common areas that would otherwise be the responsibility of the developer or the owner of the property; and

WHEREAS, homeowners associations fulfill a quasi-governmental purpose by collecting association dues that are held in trust for the benefit of residents and property owners and enforcing rules designed for the benefit of a larger community; and

WHEREAS, many of the homeowners associations in the City are defunct or are otherwise failing to provide the protections for which they were designed; and

WHEREAS, in order to protect property values in the City of Georgetown, it is necessary to enact rules by which the governing bodies administering planned communities must operate; requirements and restrictions upon the persons seeking to shift the responsibility for common area maintenance to the property owners and residents of a planned community; procedures designed to maximum information about planned communities to property owners and prospective buyers; a mechanism for allowing residents to reactivate defunct associations; and an authorization for interested parties to enforce these provisions through a private cause of action for injunctive relief;

NOW THEREFORE, be it ordained by the City of Georgetown, Kentucky as follows:

# DRAFT

**SECTION ONE** – A new Article of the Georgetown Code of Ordinances is enacted to read as follows:

1. CONSTRUCTION OF CONFLICTING PROVISIONS

- (1) This Ordinance shall be construed to establish a uniform framework for the operation and management of planned communities in the City of Georgetown and to supplement any planned community governing document that is in existence on the effective date of this Ordinance. In the event of a specific conflict between this Ordinance and express requirements or restrictions in an existing, recorded governing document, the governing document shall control. This Ordinance shall control if any governing document is silent with respect to any provision of this Ordinance.

2. APPLICABILITY

- (1) Except as otherwise provided in this Ordinance, this Ordinance applies to all planned communities created in this City after the effective date of this Ordinance.
- (2) For all planned communities created in this City before the effective date of this Ordinance, this Ordinance applies only with respect to events and circumstances occurring after the effective date of this Ordinance and does not invalidate existing provisions of the declaration, bylaws, plats, and plans of those planned communities.
- (3) The declaration, bylaws, plats, and plans of any planned community created before the effective date of this Ordinance may be amended to achieve any result permitted by this Ordinance, regardless of what applicable law provided before the effective date of this Ordinance.

3. DEFINITIONS

As used in this ordinance, unless the context requires otherwise:

- (1) "Assessment" means the liability for an expense that is allocated to a lot in a planned community;
- (2) "Association" means an incorporated or unincorporated organization that is comprised of owners of lots in a planned community and that is responsible for the administrative governance,

maintenance, and upkeep of the planned community and to which responsibilities are imposed and to which authority is granted in the declaration;

- (3) "Board of directors" means the executive body of an association, which is exercising the power of the executive body by declaration or bylaws;
- (4) "Bylaws" means the code or codes of rules adopted for the regulation or management of the affairs of the association irrespective of the name or names by which such rules are designated;
- (5) "Common area" means property within a planned community which is owned, leased, or required by the declaration to be maintained or operated by an association for the use of its members and designated as common area in the declaration;
- (6) "Common expense" means any expense or financial liability of the association, including allocations the association designates for reserves;
- (7) "Declarant" means the person or entity signing the declaration and its successors or assigns who may submit property to a declaration;
- (8) "Declarant control" means the period of time in which the declarant controls the association by appointing or electing the members of the association's board of directors;
- (9) "Declaration" means any instrument, however denominated, including any amendment or supplement, recorded among the land records of the county or counties in which any part of the planned community is located that either:
  - (a) Imposes on the association maintenance or operational responsibilities for the common area; or
  - (b) Creates the authority in the association to impose on lots, or on the owners or occupants of such lots, or on any other entity, an assessment in connection with the provision of maintenance or services for the benefit of some or all of the lots, the owners or occupants of the lots, or the common area.
- (10) "Dwelling unit" means a building or the portion of a building that is designed and intended for use and occupancy for residential purposes by a single household, which may share common walls,

roofing, or other common structural elements.

- (11) "Lot" means any plot or parcel of land designated for separate ownership or occupancy shown on a recorded subdivision plot for a planned community or the boundaries of which are described in the declaration or in a recorded instrument referred to or expressly contemplated by the declaration, other than a common area;
- (12) "Owner" means a person who owns a lot in a planned community, excluding any person that has an interest in a lot solely as security for an obligation;
- (13) "Planned community" means a residential community, excluding a condominium as defined in KRS 381.9105, comprised of individual lots for which a deed, common plan, or declaration requires:
  - (a) That owners become members of an association that governs the community;
  - (b) That owners or the association holds or leases property facilities for the benefit of the owners;
  - or
  - (c) That owners support, by membership or fees, property or facilities for all owners to use;
- (14) "Proxy" means a document, signed and dated by an owner, authorizing another person to vote on the owner's behalf.

#### 4. DECLARATION AND BYLAWS

- (1) A declaration for a planned community shall be accompanied by bylaws that provide for the operation of the planned community. The declaration and bylaws shall provide for:
  - (a) The election of the board of directors of the association;
  - (b) The number of persons constituting the board;
  - (c) The terms of the directors, with not less than one-third to expire annually;
  - (d) The powers and duties of the board;
  - (e) The method of removal of directors from office;
  - (f) Whether the services of a manager or managing agent may be engaged;
  - (g) The method of amending the declaration and bylaws;
  - (h) The manner of and authority for calling, giving notice of, and conducting meetings;

- (i) The common expenses for which assessments may be made and manner of collecting from the owners their respective shares of the common expenses;
- (j) Any provision necessary to satisfy the requirements of this Ordinance concerning activities of the association;
- (k) Any matter required by law to appear in the bylaws of organizations of the same type as the association; and
- (l) Any other matters the original declarant or the association may deem necessary and appropriate.

## 5. ADMINISTRATION OF A PLANNED COMMUNITY

### (1) Board of Directors required

- (a) An association shall administer a planned community through a board of directors that shall exercise all power and authority of the association. If an owner is not an individual, any principal, member of a limited liability company, partner, director, officer, trustee, or employee of the owner may be elected to the board.
- (b) Unless otherwise provided, a board of directors may carry out any action this Ordinance requires or allows an association to take, subject to any vote required of the owners.

### (2) A declarant shall establish an association not later than the date upon which the first lot in the planned community is conveyed to a bona fide purchaser for value. The association shall be organized as a nonprofit corporation pursuant to KRS Chapter 273 or as an unincorporated association.

### (3) Period of Declarant Control

- (a) Except as provided in subsection (4) of this Section, the declaration may provide for a period of declarant control of the association, during which period a declarant, or persons designated by the declarant, may appoint and remove the officers and directors of the board of directors. Declarant shall have no authority to remove a director elected by the owners.
- (b) Regardless of the period provided in the declaration, a period of declarant control terminates

no later than the earlier of:

1. For associations of less than 301 total lots:
  - a. Sixty (60) days after the conveyance of fifty-one percent (51%) of the lots which may be created to owners other than a declarant or subsequent declarant;
  - b. Three (3) years after all declarants have ceased to offer lots for sale in the ordinary course of business; or
  - c. Seven(7) years after the first lot was conveyed to an owner other than a declarant.
2. For associations of more than 300 total lots:
  - a. Sixty (60) days after conveyance of fifty-one percent (51%) of the lots which may be created to owners other than a declarant or subsequent declarant;
  - b. Five (5) years after all declarants have ceased to offer lots for sale in the ordinary course of business; or
  - c. Ten (10) years after the first lot was conveyed to an owner other than a declarant.

(c) A declarant may voluntarily surrender the right to appoint and remove officers and members of the board of directors before termination of that period, but in that event declarant may require, for the duration of the period of declarant control, that specified actions of the association or board of directors as described in a recorded instrument executed by the declarant be approved by the declarant before they become effective.

(4) Election by Owners

- (a) Not later than sixty (60) days after conveyance of twenty five percent (25%) of the lots which may be created to owners other than a declarant, at least one (1) officer of the board of directors and not less than twenty percent (20%) of the officers of the board of directors shall be elected by owners other than the declarant.
- (b) Not later than sixty (60) days after conveyance of forty percent (40%) of the lots which may be created to owners other than a declarant, not less than thirty-three and one-third percent (33-1/3%) of the officers of the board of directors shall be elected by owners other than the

declarant.

- (5) Not later than the termination of any period of declarant control, the owners shall elect a board of directors of at least three (3) members. The board of directors shall elect the officers in accordance with Section 6 of this Ordinance. The board of directors and officers shall take office upon election.
- (6) Any provision of the declaration or bylaws to the contrary notwithstanding, the owners, by a majority vote of all persons present and entitled to vote at any meeting of the association at which a quorum is present, may remove any member of the board of directors with or without cause, other than a director appointed by the declarant.

## 6. ASSOCIATION MEETINGS AND VOTING

- (1) A board of directors of an association shall elect officers from the members of the board, to include a president, secretary, treasurer, and other officers as the board designates.
- (2) The board may hold a meeting by any method of communication, including electronic or telephonic communication, provided that each member of the board can hear or read in real time and participate and respond to every other member of the board.
- (3) In lieu of conducting a meeting, the board may take an action with the unanimous written consent of the members of the board. Any written consent shall be filed with the minutes of the meetings of the board.
- (4) After termination of the period of declarant control, a meeting of the association shall be held at least once each year. Special meetings of the association may be called by the president, a majority of the board of directors, or by owners owning twenty percent (20%) of the total lots, or any lower percentage specified in the declaration or bylaws.
- (5) Notice of meetings of the association shall be given to owners no later than ten (10) days or sooner than sixty (60) days in advance of any meeting. The secretary or other officer specified in the bylaws shall cause notice to be hand-delivered or sent prepaid by United States mail to the mailing address of record for each owner. The notice of any meeting shall state the time and place of the meeting and the items on the agenda, including the general nature of any proposed amendment to

the declaration, any budget changes, and any proposal to remove a director.

- (6) Unless the bylaws provide otherwise, a quorum is deemed present throughout any meeting of the association if, at the beginning of the meeting, persons entitled to cast ten percent (10%) of the votes which may be cast for election of the board of directors are present in person or by proxy.

(7) Voting

- (a) If only one (1) of the multiple owners of a lot is present at a meeting of the association, he or she is entitled to cast all of the votes allocated to that lot. If more than one (1) of the multiple owners of a lot is present, the votes allocated to that lot may be cast only in accordance with the agreement of a majority in interest of the multiple owners, unless the declaration expressly provides otherwise. There is a majority agreement if any one (1) of the multiple owners casts the votes allocated to that lot without protest being made promptly to the person presiding over the meeting by any other owners of the lot.
- (b) Votes allocated to a lot may be cast pursuant to valid proxy executed by a lot owner. If a lot is owned by more than one (1) person, each owner of the lot may vote or register protest to the casting of votes by the other owners of the lot through a valid proxy. A lot owner may not revoke a proxy given pursuant to this section, except by actual notice of revocation to the person presiding over a meeting of the association. A proxy is void if it is not dated or purports to be revocable without notice. A proxy terminates one (1) year after its date, unless it specifies a shorter term.
- (c) Unless stated in the declaration of bylaws, each lot shall have one vote. However, in no event shall the declarant be entitled to more than one vote per declarant-owned lot. Cumulative voting shall not be allowed.
- (d) The acts approved by a majority of the votes cast at a meeting of the association at which a quorum is present shall constitute the acts of the owners, except when approval by a greater number of owners is required by the declaration or bylaws.

7. PLANNED COMMUNITY REGISTRY AND CITIZEN PORTAL



- (1) The association of every planned community in the City of Georgetown shall register and file with the City an initial report, on a form specified by the City, with the following information:
  - (a) The name, address, and, if applicable, the term and appointing authority for each board member of the governing body of the HOA.
  - (b) Copies of any plans, specifications, permits, and warranties related to improvements constructed on the common areas or other property that the association is obligated to maintain, repair, or replace.
  - (c) A copy of the bylaws of the association and of each amendment to the bylaws.
  - (d) A copy of the articles of incorporation of the association and of each amendment thereto.
  - (e) A copy of the declaration of covenants and a copy of each amendment thereto.
  - (f) A copy of the current rules of the homeowners' association
  - (g) A statement from the association identifying which properties are subject to the declaration, listed by street address.
- (2) On or before December 31 of each year every association shall file an annual report listing any changes to the information required in section (1) of this Section.
- (3) It is the intent of the City to host an online citizen portal allowing residents to input an address and find the information required under section (1) of this Section applicable to that specific property.
- (4) An association shall not charge any person to inspect the information required under this subsection, but an association may prescribe a reasonable fee for copying.

## 8. POWERS AND LIMITATIONS OF BOARD

- (1) Except as provided in the declaration, the bylaws, or subsection (2) of this section, the board of directors may act in all instances on behalf of the association.
- (2) The board of directors shall not act on behalf of the association to amend the declaration, to terminate the planned community, or to elect members of the board of directors or determine the qualifications, powers, and duties, or terms of office of the directors, but the board of directors may

select individuals to fill vacancies for unexpired portions of any board term. This section shall in no way limit the power or authority of the declarant as set forth in the declaration with respect to the items set forth in this section.

#### 9. QUORUM

- (1) After the termination of the declarant control period, unless the bylaws specify otherwise, a quorum is deemed present throughout any meeting of the board if persons entitled to cast fifty percent (50%) of the votes on that board are present at the beginning of the meeting. For the purposes of determining quorum or casting votes, directors shall not use proxies.

#### 10. ASSOCIATION BUDGET

- (1) After the termination of the declarant control period, the board of directors shall adopt an annual budget for the planned community, and shall:
  - (a) Provide a summary of the budget to all owners within thirty (30) days after the adoption; and
  - (b) Set a date for a meeting of the association to consider ratification of the budget, if the adopted budget contains an increase of greater than fifteen percent (15%) from the previous year's budget. The meeting shall not be less than fourteen (14) days nor more than thirty (30) days after the summary has been provided. The budget shall be deemed ratified, whether or not a quorum is present, unless at that meeting a majority of all owners, or any larger percentage of owners as specified in the declaration or bylaws, rejects the budget. If the budget is rejected, the existing budget shall be continued until such time as a subsequent budget is adopted by the board of directors in conformity with this subsection.

#### 11. AMENDMENT OF DECLARATION

- (1) Unless otherwise specified in the declaration, after the period of declarant control has ended, the owners may amend the declaration by the consent of a majority of the owners of all lots of the planned community, either in writing or in a meeting called for that purpose. No amendment to the

declaration is effective until filed in the office of the county clerk.

- (2) Unless otherwise specified in the declaration, after the period of declarant control has ended, the board of directors may amend the bylaws by the consent of a majority of the board of directors.
- (3) A vote to terminate the applicability of the declaration and to dissolve the planned community shall be in accordance with the terms of the declaration or the amendment provision set forth in subsection (1) of this section.
- (4) In no event shall a declaration be terminated or a planned community dissolved unless the declarant or board of directors has made provision for the continuing maintenance of common areas as required under section 16 of this Ordinance.
- (5) For purposes of amending a declaration, the declarant shall be entitled to one vote, regardless of the number of lots owned by the declarant.

## 12. OFFICIAL RECORDS AND INSPECTION BY MEMBERS

- (1) An association shall maintain, as official records, the following:
  - (a) A current roster of all members and their mailing addresses and parcel identifications. The association shall also maintain the electronic mailing addresses and the numbers designated by members for receiving notice sent by electronic transmission of those members consenting to receive notice by electronic transmission.
  - (b) All of the association's insurance policies or a copy thereof, which policies must be retained for at least 7 years.
  - (c) A current copy of all contracts to which the association is a party, including, without limitation, any management agreement, lease, or other contract under which the association has any obligation or responsibility. Bids received by the association for work to be performed must also be considered official records and must be kept for a period of 1 year.
  - (d) The financial and accounting records of the association, kept according to good accounting practices. All financial and accounting records must be maintained for a period of at least 7 years. The financial and accounting records must include:

- (e) Accurate, itemized, and detailed records of all receipts and expenditures.
  - (f) A current account and a periodic statement of the account for each member, designating the name and current address of each member who is obligated to pay assessments, the due date and amount of each assessment or other charge against the member, the date and amount of each payment on the account, and the balance due.
  - (g) All tax returns, financial statements, and financial reports of the association.
  - (h) Any other records that identify, measure, record, or communicate financial information.
  - (i) All other written records of the association not specifically included in the foregoing which are related to the operation of the association.
- (2) Unless otherwise prohibited by this Ordinance, any owner may examine and copy the books, records, and minutes of the association, as described in this Section, pursuant to reasonable standards set forth in the declaration, bylaws, or rules and regulations that the board promulgates. The standards may include, but are not limited to, standards governing the type of documents that are subject to examination and copying, the times and locations at which those documents may be examined or copied, and the specification of a reasonable fee for copying the documents. In no event shall an association charge a member a fee, other than reasonable copying costs, for inspecting the documents.
- (3) Unless approved by the board of directors, an owner may not examine or copy from books, records, and minutes of the association:
- (a) Information that pertains to property-related personnel matters;
  - (b) Communications with legal counsel or attorney work product pertaining to potential, threatened, or pending litigation, or other property-related matters;
  - (c) Information that pertains to contracts or transactions currently under negotiation, or information that is contained in a contract or other agreement containing confidentiality requirements and that is subject to those requirements;
  - (d) Information that relates to the enforcement of the declaration, bylaws, or rules of the

association against other owners;

- (e) Information that relates to the collection of assessments or listing of past due owner names, lot numbers, plot numbers, lot addresses, or street addresses; and
- (f) Information that shall not be distributed pursuant to federal or state law.
- (g) A list of the fees or dues charged by the association.

### 13. FINANCIAL REPORT

- (1) The association shall keep financial records sufficiently detailed to enable the association to comply with Section 14 of this Ordinance and, except for the statement of cash receipts and disbursements which shall be kept on a cash basis, all financial statements shall be prepared in accordance with generally accepted accounting principles.
- (2) Not later than one hundred eighty (180) days after the end of the fiscal year, or annually on a date provided in the declaration or bylaws, the association shall cause to be prepared a financial report for the preceding fiscal year. No later than thirty (30) days after the financial report is prepared and received by the board of directors, the association shall make it available for examination by any lot owner, and, upon request and payment of a reasonable fee, shall provide a lot owner with a copy of the financial report.
- (3) The type of financial report the association shall have prepared under this section shall be determined as follows:
  - (a) An association with total annual revenues of less than one hundred fifty thousand dollars (\$150,000) shall have prepared a financial statement of cash receipts and disbursements that disclose all sources of income and expenses by account and classification;
  - (b) An association with total annual revenues of at least one hundred thousand dollars (\$150,000) shall have prepared a financial report under the standards of a compilation by a certified public accountant;
  - (c) The board of directors of an association, in its sole discretion, may elect to have the financial report required by this subsection prepared in accordance with a higher standard than required

for that association's annual revenue level.

#### 14. DISCLOSURE TO PURCHASERS

- (1) The seller of a dwelling unit or lot shall disclose to a purchaser or purchaser's agent before execution of any contract for sale or otherwise before conveyance:
  - (a) Whether there is a declaration governing the dwelling unit or lot;
  - (b) Whether an association governing the property exists or has previously existed;
  - (c) Whether the property is subject to an assessment by the association.
  - (d) A statement that the buyer may file a written request with the association for relevant information regarding the declaration and association fees, and
  - (e) In those instances when there is no declarant or board of directors actively carrying out the duties of the association and the association has an inactive standing with the Secretary of State's office or local county clerk's office, the seller of the property may comply with this section by providing the following statement to the purchaser:

##### HOA NOTICE

This property is subject to a declaration that imposes on the property maintenance or operational responsibilities for common area(s) and/or creates the authority in a homeowners association to impose on lots, or on the owners or occupants of such lots, or on any other entity, an assessment in connection with the provision of maintenance or services for the benefit of some or all of the lots, the owners or occupants of the lots, or the common area. The current status of the association is inactive. However, the association may be reactivated at any time, and its inactive status does not, in any way, negate the restrictions or requirements contained in the declaration, nor does it relieve the owners of lots for the maintenance and operational responsibilities set forth in the declaration.

- (2) Buyer's Request for Disclosure
  - (a) Upon written request from a prospective buyer, an association shall provide, within 10 days of the request, a certificate, current to the date of issuance and signed and dated by the association's manager or authorized agent, which contains:

1. A statement disclosing the effect on the proposed disposition of any right of first refusal or other restraint on the free alienability of the lot;
  2. A statement setting forth the amount and frequency of the common expense assessment and any unpaid common expense, emergency assessment, or special assessment currently due and payable from the selling lot owner;
  3. A statement of any other fees payable by owners;
  4. The name, mailing address, and phone number of the individual responsible for providing the certificate; and
- (b) A lot owner or lot owner's agent providing a purchaser with the information required under subsection 1 of this section shall not be liable to the purchaser for any erroneous information provided by the association or by owner pursuant to subsection 1(d)(5) and included in the certificate.
- (3) A lot owner or lot owner's agent shall not be liable to a purchaser for the failure or delay of the association to provide the certificate in a timely manner.
- (4) The certificate and disclosure referred to in this section shall not be required in the case of:
- (a) A gratuitous disposition of a lot;
  - (b) A disposition pursuant to a court order;
  - (c) A disposition by a government or governmental agency;
  - (d) A disposition by foreclosure or deed in lieu of foreclosure;
  - (e) A disposition to a person in the business of selling real estate who intends to offer those lots to purchasers, and where the purchaser has modified or waived the requirements of this section by agreement; or
  - (f) A disposition that may be canceled at any time and for any reason by the purchaser without penalty.
- (6) An association may not deny the validity of any statement in the certificate.

15. MODEL HOMES

- (1) In any model homes or home designed to be shown for marketing purposes within a planned community, a copy of the information contained in Section 14 of this Ordinance shall be placed conspicuously upon the premises, with a red cover and the following statement, in Times New Roman 36 point font or greater:

Planned Community Association

DISCLOSURE OF COVENANTS, RESTRICTIONS AND FEES

for the neighborhood of:

[Name of Neighborhood]

PLEASE READ CAREFULLY

- (2) Declarant shall consent, as part of his or her application for preliminary subdivision plat approval, to inspection by the City of any model home or home designed to be shown for marketing purposes within a planned community, for the purpose of verifying compliance with this section.

16. RESPONSIBILITY FOR COMMON AREAS

- (1) A declaration shall clearly indicate, by reference to plat or other record officially recorded in the county clerk's office, all common areas not intended to be owned or maintained by an owner of an individual lot, other than streets and other infrastructure being dedicated to the City for maintenance.
- (2) Unless otherwise provided by the declaration, the association is responsible for reasonable maintenance, repair, and replacement of the common areas, and each owner is responsible for maintenance, repair, and replacement of the owner's lot and improvements to that lot, including the dwelling unit and the utility lines serving that dwelling unit.
- (3) An owner shall permit agents or employees of the association and other owners' access through the owner's lot and dwelling unit for the purpose of fulfilling the association's duties and obligations. Any damage to the common areas, lot, or dwelling unit due to that access is the responsibility of



the owner that caused the damage or the association if it is responsible for the damage. That owner, or the association, is liable for the prompt repair of any damage and, if not repairable, for the value of the damaged property or item as it existed immediately prior to that damage.

#### 17. ALLOCATION OF COMMON EXPENSES

- (1) In accordance with its declaration, all costs the association incurs in the administration, governance, and maintenance of a planned community are common expenses. Unless otherwise provided in the declaration, all costs of the administration, operation, maintenance, repair, and replacement of the common areas are common expenses.
- (2) The common expense liability of each lot shall be allocated in accordance with the allocation set forth in the declaration. If the declaration does not establish any allocation, the common expense liability shall be allocated equally among the lots.
- (3) The board of directors shall assess the common expense liability for each lot at least annually, based on a budget the board adopts at least annually in accordance with Section 10 of this Ordinance.
- (4) Notwithstanding subsection b of this Section, during the period of declarant control of an association, declarant shall be allocated that portion of the common expenses of the association as the unsold lots bears to the total lots in the planned community.

#### 18. COMPLIANCE WITH COVENANTS

- (1) The association and all owners, residents, tenants, and other persons lawfully in possession and control of any part of an ownership interest shall comply with any covenant, condition, and restriction set forth in any recorded document to which they are subject, and with the bylaws and the rules of the association, as lawfully amended. Any violation is grounds for the association or any owner to commence a civil action for damages, injunctive relief, or both, and an award of court costs and reasonable attorney's fees in both types of action.
- (2) Owners shall be responsible for the conduct of their residents, tenants, and persons occupying the dwelling unit and shall exercise all control necessary to see that occupants abide by the covenants,

restrictions, and rules. Owners are responsible for the payment of all charges, assessments, damages, or fines that the association may levy against the property due to the misconduct of their residents, tenants, or persons occupying the dwelling unit.

19. PROHIBITION AGAINST COMINGLING ASSOCIATION FUNDS WITH DECLARANT'S

- (1) All association funds held by a declarant shall be maintained separately in the association's name. Reserve and operating funds of the association shall not be commingled prior to the expiration of the period of declarant control except the association may jointly invest reserve funds; however, such jointly invested funds must be accounted for separately.
- (2) No declarant in control of an association shall commingle any association funds with his or her funds or with the funds of any other association or planned community.
- (3) Association funds may not be used by a declarant to defend a civil or criminal action, administrative proceeding, or arbitration proceeding that has been filed against the declarant or directors appointed to the association board by the declarant, even when the subject of the action or proceeding concerns the operation of the declarant-controlled association.
- (4) Association funds shall be used only for those purposes authorized in the declaration.

20. FAILURE TO FILL VACANCIES ON BOARD OF DIRECTORS SUFFICIENT TO CONSTITUTE A QUORUM; APPOINTMENT OF RECEIVER UPON PETITION OF MEMBER.

- (1) If an association fails to fill vacancies on the board of directors sufficient to constitute a quorum in accordance with the bylaws, any member of the association may give notice of the member's intent to apply to the circuit court within whose jurisdiction the association lies for the appointment of a receiver to manage the affairs of the association. The form of the notice shall be as follows:

NOTICE OF INTENT TO

APPLY FOR RECEIVERSHIP

YOU ARE HEREBY NOTIFIED that the undersigned member of (name of association) intends to

file a petition in the circuit court for appointment of a receiver to manage the affairs of the association on the grounds that the association has failed to fill vacancies on the board of directors sufficient to constitute a quorum. This petition will not be filed if the vacancies are filled within 30 days after the date on which this notice was sent or posted, whichever is later. If a receiver is appointed, the receiver shall have all of the powers of the board and shall be entitled to receive a salary and reimbursement of all costs and attorney's fees payable from association funds.

(name and address of petitioning member)

- (2) The notice required by subsection (1) must be provided by the member to the association by certified mail or personal delivery, must be posted in a conspicuous place within the homeowners' association, and must be provided to every member of the association by certified mail or personal delivery. The notice must be posted and mailed or delivered at least 30 days prior to the filing of a petition seeking receivership. Notice by mail to a member shall be sent to the address used by the county property appraiser for notice to the member.
- (3) If the association fails to fill the vacancies within 30 days after the notice required by subsection (1) is posted and mailed or delivered, the member may proceed with the petition.
- (4) If a receiver is appointed, all members shall be given written notice of such appointment.
- (5) The association shall be responsible for the salary of the receiver, court costs, and attorney's fees. The receiver shall have all powers and duties of a duly constituted board of directors and shall serve until the association fills vacancies on the board sufficient to constitute a quorum and the court relieves the receiver of the appointment.

## 21. REVITALIZATION OF DEFUNCT ASSOCIATIONS

- (1) Preservation of residential communities; revival of declaration of covenants.
  - (a) Consistent with required and optional elements of the comprehensive plan, zoning ordinances, and other applicable provisions of the Code of Ordinances, homeowners are encouraged to

preserve existing residential communities, promote available and affordable housing, protect structural and aesthetic elements of their residential community, and, as applicable, maintain roads and streets, easements, water and sewer systems, utilities, drainage improvements, conservation and open areas, recreational amenities, and other infrastructure and common areas that serve and support the residential community by the revival of a previous declaration of covenants and other governing documents that may have ceased to govern some or all parcels in the community.

- (b) In order to preserve a residential community and the associated infrastructure and common areas for the purposes described in this section, the parcel owners in a community that was previously subject to a declaration of covenants that has ceased to govern one or more parcels in the community may revive the declaration and the homeowners' association for the community upon approval by the parcel owners to be governed thereby as provided in this Ordinance.

(2) Eligible residential communities; requirements for revival of declaration.

- (a) All parcels to be governed by the revived declaration must have been once governed by a previous declaration that has ceased to govern some or all of the parcels in the community;
- (b) The revived declaration may not contain covenants that are more restrictive on the parcel owners than the covenants contained in the previous declaration, except that the declaration may:
  - (i) Have an effective term of longer duration than the term of the previous declaration;
  - (ii) Omit restrictions contained in the previous declaration;
  - (iii) Govern fewer than all of the parcels governed by the previous declaration;
  - (iv) Provide for amendments to the declaration and other governing documents; and
  - (v) Contain provisions required by this chapter for new declarations that were not contained in the previous declaration.

(3) Organizing committee; parcel owner approval.

- (a) The proposal to revive a declaration of covenants and a homeowners' association for a community under the terms of this Ordinance shall be initiated by an organizing committee consisting of not less than three parcel owners located in the community that is proposed to be governed by the revived declaration. The name, address, and telephone number of each member of the organizing committee must be included in any notice or other document provided by the committee to parcel owners to be affected by the proposed revived declaration.
- (b) The organizing committee shall prepare or cause to be prepared the complete text of the proposed revised declaration of covenants to be submitted to the parcel owners for approval. The proposed revived documents must identify each parcel that is to be subject to the governing documents by its legal description, and by the name of the parcel owner or the person in whose name the parcel is assessed on the last completed tax assessment roll of the city at the time when the proposed revived declaration is submitted for approval by the parcel owners.
- (c) The organizing committee shall prepare the full text of the proposed articles of incorporation and bylaws of the revived homeowners' association to be submitted to the parcel owners for approval, unless the association is then an existing corporation, in which case the organizing committee shall prepare the existing articles of incorporation and bylaws to be submitted to the parcel owners.
- (d) The proposed revived declaration and other governing documents for the community shall:
  - (i) Provide that the voting interest of each parcel owner shall be the same as the voting interest of the parcel owner under the previous governing documents;
  - (ii) Provide that the proportional-assessment obligations of each parcel owner shall be the same as proportional-assessment obligations of the parcel owner under the previous governing documents;

- (iii) Contain the same respective amendment provisions as the previous governing documents or, if there were no amendment provisions in the previous governing document, amendment provisions that require approval of not less than two-thirds of the affected parcel owners;
    - (iv) Contain no covenants that are more restrictive on the affected parcel owners than the covenants contained in the previous governing documents; and
    - (v) Comply with the other requirements for a declaration of covenants and other governing documents as specified in this Ordinance.
  - (e) A copy of the complete text of the proposed revised declaration of covenants, the proposed new or existing articles of incorporation and bylaws of the homeowners' association, and a graphic depiction of the property to be governed by the revived declaration shall be presented to all of the affected parcel owners by mail or hand delivery not less than 14 days before the time that the consent of the affected parcel owners to the proposed governing documents is sought by the organizing committee.
  - (f) At least ten (10) percent of the affected parcel owners must agree in writing to the revived declaration of covenants and governing documents of the homeowners' association or approve the revived declaration and governing documents by a vote at a meeting of the affected parcel owners. Proof of notice of the meeting to all affected owners of the meeting and the minutes of the meeting recording the votes of the property owners shall be certified by a court reporter or an attorney licensed to practice in the commonwealth.
- (4) Recording; notice of recording; applicability and effective date.
- (a) No later than 60 days after the proposed declaration has met the requirements of subsection 3 of this Section, the organizing committee shall file the articles of incorporation of the association with the Secretary of State if the articles have not been previously filed with the division.

- (b) No later than 60 days after the proposed declaration has met the requirements of subsection 3 of this Section, the president and secretary of the association shall execute the revived declaration and other governing documents in the name of the association and have the documents recorded with the clerk of the circuit court in the county where the affected parcels are located.
- (c) The recorded documents shall include the full text of the approved declaration of covenants, the articles of incorporation and bylaws of the homeowners' association, the letter of approval by the department, and the legal description of each affected parcel of property.
- (d) Immediately after recording the documents, a complete copy of all of the approved recorded documents must be mailed or hand delivered to the owner of each affected parcel. The revived declaration and other governing documents shall be effective upon recordation in the public records with respect to each affected parcel subject thereto, regardless of whether the particular parcel owner approved the revived declaration. Upon recordation, the revived declaration shall replace and supersede the previous declaration with respect to all affected parcels then governed by the previous declaration and shall have the same record priority as the superseded previous declaration. With respect to any affected parcels that had ceased to be governed by the previous declaration as of the recording date, the revived declaration may not have retroactive effect with respect to the parcel and shall take priority with respect to the parcel as of the recording date.
- (e) With respect to any parcel that has ceased to be governed by a previous declaration of covenants as of the effective date of this act, the parcel owner may commence an action within 1 year after the effective date of this act for a judicial determination that the previous declaration did not govern that parcel as of the effective date of this act and that any revival of such declaration as to that parcel would unconstitutionally deprive the parcel owner of rights or property. A revived declaration that is implemented pursuant to this act shall not apply to or affect the rights of the respective parcel owner recognized by any court order or

judgment in any such action commenced within 1 year after the effective date of this Ordinance, and any such rights so recognized may not be subsequently altered by a revived declaration implemented under this act without the consent of the affected property owner.

## 22. NUISANCES ON COMMON AREAS; ABATEMENT; LIENS; APPOINTMENT OF RECEIVER FOR UNPAID ABATEMENT COSTS

- (1) The existence of any condition on Common Area within a Planned Community that would be considered a violation of any provision of the Georgetown Code of Ordinances regarding property maintenance or nuisances, if that condition were to exist on private property, is hereby declared to be a public nuisance.
- (2) The City may abate any public nuisance on Common Area according to the abatement procedures specified in the appropriate Code section under which a violation exists.
- (3) The City shall have a lien for the costs of abatement of a public nuisance on Common Area in a Planned Community plus an administrative fee of seventy-five dollars (\$75.00). This lien shall be superior to and have priority over all other liens on the property, except state, county, school board, and city taxes pursuant to KRS 82.720. This lien shall be evidenced by a notice of lien claimed, filed in the county clerk's office, which notice shall include the affidavit of the code official, setting forth the property in question, the amount of the City of Georgetown's cost of abatement, the date of abatement, and that the notice provisions of this section were complied with before abatement.
- (4) A lien for abatement costs on Common Area shall be considered a debt of the Planned Community by and through the Association responsible for maintenance of the Common Area. In the event the Planned Community's Declaration calls for an Association to oversee maintenance of the Common Area but no association exists, such defect shall not act to invalidate the debt or the lien securing it.
- (5) In the event a Planned Community fails to reimburse the City for abatement costs and fees, the City Attorney is authorized to file an action, in any court having jurisdiction over such matter, to recover



such costs and fees and reasonable attorney's fees and court costs. The City Attorney is further authorized to seek appointment of a receiver to oversee the collection of association dues from owners of property within the Planned Community in an amount no greater than is necessary to pay such abatement costs, fees, court costs, and the fees and expenses of the receiver. If the code violations are of a nature requiring continuous and ongoing maintenance, such as mowing and landscaping of open space or annual maintenance of stormwater best management practices, the action may further seek to have the receiver collect dues necessary to provide for ongoing maintenance until such time as the Planned Community Association establishes a plan for ongoing maintenance, which plan shall be approved by the court having jurisdiction over the matter. The receiver shall have the independent power to collect dues in the same manner as the Planned Community's Association, and the fact that no Association exists shall not operate as a bar to the receiver's authority to collect the dues.

## 23. ENFORCEMENT

- (1) The City shall have the authority to enforce any provision of this Ordinance by seeking an injunction in any court having jurisdiction over such matter and may recover its court costs and reasonable attorney's fees. This remedy shall be in addition to any other remedies specified in this Ordinance.
- (2) It is hereby expressly declared that residents and owners of property in planned communities have vested interests in maintaining the condition of the Common Areas and the integrity and character of their subdivisions as guaranteed by the applicable covenants, conditions and restrictions, and, ultimately, in protecting the values of their individual properties. The provisions of this Ordinance are intended to give residents and property owners the tools necessary to preserve these interests by providing a set of rules by which the governing bodies administering planned communities must operate and by enacting certain requirements and restrictions upon the persons seeking to shift the responsibility for common area maintenance to the property owners and residents of a planned community and by requiring certain information regarding the planned community and its

restrictions, dues, and governing body to be provided to residents, property owners and prospective buyers. Any resident, property owner or prospective buyer of property in a planned community who is aggrieved by a violation of this Ordinance may commence an action, in any court having jurisdiction over such matter, for injunctive relief and an award of court costs and reasonable attorney's fees.

**SECTION TWO** - If any section, subsection, sentence, clause, phrase, or portion of this ordinance is for any reason held invalid or unlawful by a court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions hereof.

**SECTION THREE** - This Ordinance shall become effective on adoption and publication.

PUBLICLY INTRODUCED AND READ FIRST TIME: \_\_\_\_\_, 2016

PUBLICLY READ SECOND TIME AND PASSED: \_\_\_\_\_, 2016

APPROVED: \_\_\_\_\_

Tom Prather, Mayor

ATTEST: \_\_\_\_\_

Tracie Hoffman, City Clerk